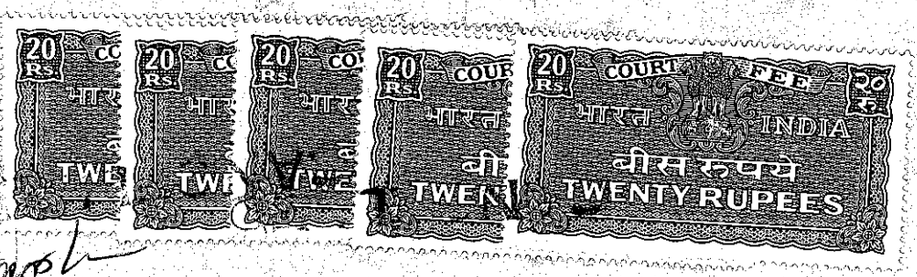

(3)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

WRIT PETITION NO. 799 OF 1999

Petitioner: Pandit Chhitani Prasad Mitani Prasad Dubey, Post Graduate College, Through its President Shri Bhagwat Prasad Dubey, Link Road Bilaspur(MP)

Vs.

Respondents:

1. Mayor, Municipal Corporation Bilaspur

2. Municipal Corporation Bilaspur, Through its Commissioner.

3. ~~xxxxxxxxxxxxxxxx~~ Town and Country Planning Bilaspur, Through its Joint Director.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(136)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.799/99 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

19.09.2003

Shri Prashant Mishra, counsel for the petitioner.

Dr. N.K. Shukla, Additional Advocate General with Shri Praveen Das, Panel Lawyer for respondent No.3.

None appears on behalf of respondents 1 & 2. No representation is made.

The perusal of previous order sheets reveals that on 28.11.2001, the Court has directed to issue SPC to respondent No.2 for appearance on 04.12.2001 and in compliance of the Court order, the SPC was issued. On 10.12.2001 it was mentioned that the name of Mr. P.K. Mishra, Advocate be shown for respondent No.2 and his name appears in the cause list. Even then, no body appears on behalf of respondents 1 & 2.

Heard the learned counsel for the parties.

By this writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged the action of respondent No.2 demolishing the building of the petitioner and also for refusal to renew the earlier sanction plan for construction of the proposed building.

The petitioner's case is that Pandit C.MD. College was established on 31st July, 1956 and it is running graduate and post-graduate courses. The teaching staff of the college consists of 78 teachers besides 40 other employees making a total of 118. In order to construct four walls for the college, the Society moved an application together with map

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विरुद्ध

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showing the proposed construction to the Municipal Corporation, Bilaspur for its approval and sanction on 10.03.97 and the necessary requisite fee for the same amounting to Rs.10,500/- was also deposited on 17.03.97. Ultimately, the Municipal Corporation, Bilaspur, sanctioned the map showing the proposed construction on 05.05.97. However, this sanction was valid for one year i.e. up to 04.05.98. In the proposed construction, 18 shops were also proposed and a cycle stand in the ground floor. The shops were proposed to be constructed over the gallery with a view to raise funds to cover up the entire construction expenses. According to the petitioner, the said map was sanctioned without any modification and accordingly, the petitioner raised the construction up to the plinth area and further columns were raised thereupon. This construction was raised between 05.05.97 to 04.05.98. As a whole, the construction was to be carried out in a large scale, which could not be completed within a period of one year. Accordingly, the petitioner moved for renewal of the sanction and the application for renewal of sanction together with a further deposit of Rs.10,500/- was submitted on 30th October, 1998. Municipal Corporation, Bilaspur directed the petitioner to make similar application before the Joint Director, Town & Country Planning, Bilaspur, and accordingly, the petitioner submitted an application on 07.11.98 to the Joint Director. The Joint Director replied to the petitioner that the proposed construction was already approved by the Municipal

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आदेश पत्रक

मामला क्रमांक W.P.799/99 सन् ~~200~~

विरुद्ध

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Corporation, Bilaspur, and under the Land Development Rules, the Municipal Corporation was fully competent to sanction the proposed construction. The Commissioner, Municipal Corporation, Bilaspur, wrote a letter dated 10.11.98 soliciting the approval and sanction for the proposed construction. Respondent No.3 gave opinion that since the construction was proposed fore commercial use, no sanction could be accorded as under the Bilaspur Development Project, the land used was proposed for educational purposes. The petitioner had not raised any construction after 04.05.98. Further respondent No.2 issued notice on 01.01.99 under Section 307 (2) of the Municipal Corporation Act, 1956, that the construction was made without any permission and therefore, the petitioner should show cause by 02.01.99 as to why this should not be demolished. The process server without serving the notice to any of the officers of the College, has wrongly mentioned that service was refused. However, reply was given on 02.01.99. The Corporation started demolishing the building on 19.01.99. Thereafter, the petitioner raised objection and on verbal order of the Mayor, demolition operation was discontinued. The Municipal Corporation, Bilaspur, wrote a letter dated 25.01.99 (Annexure P-10) intimating that the construction is to be made keeping in view the proposed 35 meters width of the road, whereas, number of constructions have been carried out and are being carried out by various persons of the same locality on the basis of 25 meters width

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the road. The petitioner had brought to the notice of the Municipal Corporation that houses and shops were being constructed in the link road in the same line including the shopping complex of Kedia Brothers and that the demolition was made purposely and deliberately without any legal justification. Ultimately, it has been prayed that the Municipal Corporation be directed to grant sanction of the proposed construction as per the map submitted.

The learned counsel for the petitioner submitted that as per the revised master plan dated 26.08.2000 (Annexure P-19), now the width of road has been proposed to be 24 meters instead of 35 meters. Therefore, the Municipal Corporation be directed to consider the proposal of the petitioner in the light of the revised master plan. The learned counsel appearing on behalf of respondent No.3 has no objection, if the application of the petitioner is considered in the light of the proposed revised master plan.

Having heard the learned counsel for the parties, having regard to the facts and circumstances of the case and having regard to the submission made by the learned counsel for the petitioner that now, as per the revised proposed plan (Annexure P-19), the width of the road is proposed as 24 meters instead of 35 meters, respondent No.2 is directed to consider the renewal application of the petitioner dated 30th October, 1998. If it is proposed that the width of the road will be 24

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आदेश पत्रक

मामला क्रमांक W.P.799/99 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

~~meters then, Municipal Corporation, Bilaspur shall consider the proposal~~ of the petitioner in the light of the changed circumstances and pass appropriate order on the request of the petitioner, within a period of three months from today.

With the above observations, the petition stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Soma